

From: BARRY TORNICK
To: Schuver-Henry
Date: 8/23/99 3:59pm
Subject: CA750 Issue Related to Groundwater to Surface Water

I was sitting on the beach last week reading the Cape Cod Times and found an article about the EPA Water Program revising cleanup rules to address the quality of body of water, instead of just the level of discharge.

I have been arguing with DuPont exactly the issue that it is impossible to assess whether their GW to SW discharge is acceptable without considering the overall quality of the surface water body. This proposal would therefore, seem to perfectly meet our needs. Ideally, we could defer to the Water Program so that they can set limits based on overall water quality considerations. Unfortunately, I expect that this will be impossible since it will probably take a very long time (if ever) before this proposal is actually functioning (see attached). If the proposal ever is effective, the focus will probably be more on non-point sources than GW to SW discharges.

At a minimum, this proposal is evidence (and acknowledgment) that the Water Program should be playing a significant role in our CA750 GW to SW determinations. Even if the Water Program cannot completely help us resolve this issue, maybe someone in HQ can discuss with the Water Program our needs and get some assistance in making these very difficult determinations.

CC: RBasso, NJ

**** CLEAN WATER ****

EPA Plan Attacks Dirty Waterways. The Washington Post, August 15, 1999, pA7. The full text of the article is available at: <http://search.washingtonpost.com/wp-srv/WPlate/1999-08/15/1951-081599-idx.html>

The Clinton administration announced on August 14 that it will begin enforcing a section of the Clean Water Act that has been generally neglected. This is a requirement that states take additional steps to lessen pollution in 20,000 of the nation's rivers, lakes and bays.

Under the new rules proposed by the Environmental Protection Agency each state must write an individual plan for cleaning every body of water that is too polluted for fishing and swimming. This will affect roughly two-fifths of all waterways in the United States.

This will be the first time that the federal government has compelled states to determine the causes of pollution in their waters and to determine how to reduce contaminants from water that runs off farms and city streets as well as toxins released from factories and sewage treatment pipes.

"These steps will chart a course to clean up 20,000 waterways and ensure that they remain safe for generations to come," said President Clinton on August 14. Carol Browner, Administrator of the Environmental Protection Agency, signed the proposed regulation and predicted that it will become final before the end of the year.

The announcement is interpreted by many environmental groups to be a capitulation to a wave of lawsuits which have been filed against the EPA over the past few years to force the agency to impose the requirements that the administration has now put forth. Environmentalists in 31 states have filed lawsuits which, in more than half the cases, have led to settlements dictating that the EPA must step in if states do not act on their own.

"The bringing of more than 30 cases...has brought considerable pressure on EPA to revive this long dormant part of the Clean Water Act," said an attorney for the Natural Resources Council. He called the administration's action "a major environmental proposal."

The proposal is differs from current water regulation in two ways. **The first is that it shifts the focus from specific discharges from individual polluters to an assessment of the overall quality of water.** The states would have to set a limit,

known as a "total maximum daily load," for each body of water. The second change is that states would be forced for the first time to reduce "non-source" pollution from diverse sources such as farm and urban run-off. Though very difficult to measure, these sources of pollution are now thought to account for 60 percent of current water pollution and are a major threat to the nation's waters.

Said Ms. Browner: "This is the last chapter in how we get to fishable, swimmable waters for the people of the country."

This article was also reported in:

Clinton Unveils New Steps for Protecting U.S. Waterways. Daily Environment Report, August 16, 1999, pAA-1.

**** CLEAN WATER ****

Toward Cleaner Water [Editorial]. The Washington Post, August 18, 1999, pA18. The full text of the editorial is available at:
<http://www.washingtonpost.com/wp-srv/WPcap/1999-08/18/058r-081899-idx.html>

The Clean Water Act has been in effect for many years. In spite of this much of the nation's water is still too dirty for fishing or swimming. This is due to the fact that although a great deal of attention has been paid to reducing pollution from individual sources such as factories and sewage treatment plants, less effort has gone into dealing with such sources as urban and agricultural runoff.

Last week the Clinton administration announced a plan for doing so. [See Enviro-Newsbrief August 16, 1999.] The Washington Post feels that the almost off-hand manner in which this plan was announced, a brief mention of it in the President's Saturday radio address and a press release from the Environmental Protection Agency including an invitation to read more about it on its Web page, was quite remarkable given the enormous transformations the strategy would entail.

The extensive pollution that remains is far harder to deal with for a variety of reasons, primarily political. It requires changes in the behavior of not just a few relatively easily identifiable companies, but of the populations of entire watersheds, often spread across multiple states. The question is: how can this be done?

The Environmental Protection Agency proposes to require sometimes very reluctant states to enforce a long neglected section of the Clean Water Act involving TMDLs, total maximum daily loads of a given pollutant a body of water can absorb and still remain clean. The states will have to inventory their lakes, rivers and bays and identify which ones - worst cases first - are still not clean enough and identify how much of each pollutant needs to be reduced. After this the states have to allocate further reductions among classes of polluters. For example: how much reduction must come from agriculture, or from urban areas, or from already regulated factories or municipal facilities? The states must then design plans for "reasonable assurance" that the reductions would actually occur. Envisioned in the regulation is also a market for polluters which would allow the selling of excess ability to comply with the new standards to those with more difficulty.

There is near certainty that the plan will meet strong resistance in the courts and Congress. The argument in the courts will be that the EPA lacks the power under the act to regulate generalized urban and agricultural pollution. The current Congress will attempt to strip the agency of such power in the future. In 1995 the House passed legislation, which failed in the Senate, that would have weakened the EPA's enforcement power, and that was well before the administration took this action which would substantially broaden the agency's enforcement abilities.

The Washington Post concludes that though the proposal presents a framework to accomplish a necessary goal, enforcement is the key. This will involve a long string of political questions which will probably not be resolved until this administration leaves office.

